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SERVICE DATE - MAY 10, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-31 (Sub-No. 37X)

GRAND TRUNK WESTERN RAILROAD INCORPORATED—ABANDONMENT EXEMPTION—IN OAKLAND COUNTY, MI

Decided: May 8, 2001

On February 8, 2001, Grand Trunk Western Railroad Incorporated (GTW) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 for GTW to abandon a line of railroad, referred to as the North Pontiac Spur, extending from milepost 2.39 to milepost 2.49/38.46, at Belt Junction on the Pontiac Belt Line; from milepost 2.49/38.46, at Belt Junction, to the end of track at milepost 37.7, near Joslyn Avenue on the Romeo Subdivision; and from milepost 2.75, at Belt Junction, to the end of track at milepost 1.25, near Montcalm Street on the Cass City Subdivision, a total distance of approximately 2.36 miles entirely within Pontiac, Oakland County, MI (line). Pursuant to 49 U.S.C. 10502(b), the Board served and published a notice in the Federal Register (66 FR 12831) on February 28, 2001, instituting an exemption proceeding. We will grant the exemption, subject to one environmental condition and standard employee protective conditions.

BACKGROUND

GTW states that the line currently is used solely to provide rail service to the Pontiac Plant of General Motors Corporation (GM or plant), the only shipper on the line, and functions essentially as industrial spur trackage for GM. GTW handles outbound finished steel and metal parts including assorted automotive vehicle stamped parts from GM, totaling approximately 2,000 carloads per year. GTW provides service once a day, six days a week, with a yard switcher locomotive and a two-person crew based in Pontiac. As part of a large scale improvement project at the plant, GM and GTW have entered into a contract to transfer the line and right-of-way to GM. GM intends to relocate and reconfigure the line as necessary to facilitate improved operations and safety at its plant. Therefore, GTW seeks abandonment of the line and removal of its existing common carrier obligation on the line to enable GTW to transfer the line to GM upon consummation of the abandonment. GTW indicates that it will continue to provide service to GM via GTW's existing rail lines and connections at Belt Junction with what will then be a GM-owned line. No changes in existing GTW operations, patterns of service or traffic flows will occur.

On March 16, 2001, GTW filed at the Board GM's letter addressed to the Board expressing support for GTW's abandonment petition. Both GTW and GM have requested expedited consideration of the abandonment petition. GTW notes that, despite the limited nature of the abandonment and GTW's agreement with and strong support from GM, it has not sought exemption from the offer of financial assistance (OFA) requirements of 49 U.S.C. 10904, and the public use requirements of 49 U.S.C. 10905. However, GTW indicates that it would oppose any request for a public use condition as inconsistent with governing law and the intended post-abandonment use of the right-of-way. Further, GTW maintains that any OFA from a non-GM party would be inappropriate and subject to rejection.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. The exemption will encourage safe, honest and efficient management of railroads, will promote the development of an economically sound and efficient transportation system, and will foster sound economic conditions by allowing GTW to transfer the track and right-of-way to GM for value, eliminate the ongoing cost of owning and maintaining the line, and redeploy its assets more productively elsewhere on its system. [49 U.S.C. 10101(3), (5) and (9)]. GM will retain access to all rail service that it currently enjoys. GM's control of the line will enable it to better structure and coordinate operations at its plant in a safe and efficient manner to meet the needs of the public. [49 U.S.C. 10101(4)]. By minimizing the administrative expense of an abandonment application, an exemption will reduce regulatory barriers to exit and provide for expeditious handling of the proceeding. [49 U.S.C. 10101(2) and (7)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from an abuse of market power because GM, the only shipper on the line, intends to acquire the line. GTW will continue to serve the plant. The abandonment will allow GM to acquire the line and thus benefit from the increased flexibility it will have for plant configuration and operations. Given our finding regarding the probable effect of the transaction on market power, we need not determine whether the transaction is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions set forth in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

GTW has submitted an environmental report with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed action. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on March 23, 2001.

In the EA, SEA notes that the Michigan Department of Environmental Quality (DEQ) has indicated that it needs additional information to determine whether wetlands are present in the abandonment area, and if so, whether salvage activities will impact wetlands, which would require GTW to obtain state permits. Therefore, SEA recommends that, prior to salvage of the line, GTW must consult with DEQ to determine whether any wetlands are present and whether any state wetlands protection permits are required.

No comments to the EA were filed by the April 20, 2001 due date. We will impose the condition recommended by SEA. Based on SEA's recommendation, we conclude that the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

Although SEA has indicated that the right-of-way may be suitable for other public use under 49 U.S.C. 10905, no one has sought a public use condition, and none will be imposed.¹

As noted above, GTW and GM have requested expedited handling of this petition. GTW has requested that the exemption be made effective by 15 days from service of this decision. No one has opposed the abandonment and no requests for trail use/rail banking under 49 CFR 1152.29 were filed in response to the February 28, 2001 Federal Register notice. Although we would not expect to receive an OFA to allow rail service to continue under the circumstances here, GTW has not requested that we exempt it from the OFA procedures; and we will not do so. In an effort to accommodate the requests for expedited handling, we will make the exemption effective in 15 days, rather than the customary 30 days.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the abandonment of the above-described line, subject to the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979), and subject to the condition that, prior to salvage of the line, GTW must consult with DEQ to determine whether any wetlands are present and whether any state wetlands protection permits are required.

¹ Public use requests were due no later than 20 days after publication of the notice of the petition for exemption in the Federal Register, or by March 20, 2001.

2. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1)² to allow rail service to continue must be received by the railroad and the Board by May 18, 2001, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by a \$1,000 filing fee. See 49 CFR 1002.2(f)(25).

3. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

4. Provided no OFA has been received, this exemption will be effective on May 25, 2001. Petitions to stay must be filed by May 21, 2001, and petitions to reopen must be filed by June 4, 2001.

5. Pursuant to the provisions of 49 CFR 1152.29(e)(2), GTW shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by GTW's filing of a notice of consummation by May 10, 2002, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed not later than 60 days after satisfaction, expiration or removal of the legal or regulatory barrier.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary

² See Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997).